IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27-07-2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.No.13721 of 2001

N. Kamaiyaswamy .. Petitioner

vs.

1. Central Administrative Tribunal
   Chennai Bench
   rep. by its Registrar
   High Court Buildings
   Chennai 600 104.

2. Union of India
   rep. by the Secretary
   Ministry of Railways
   Rail Bhavan
   New Delhi 110 001.

3. Chief Personnel Officer
   Head Quarters Office
   Personnel Branch
   Southern Railway
   Chennai 600 003.

4. Divisional Personnel Officer
   Divisional Office
   Personnel Branch
   Southern Railway
   Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorarified mandamus as calling for the records of the first Respondent relating to the order dt.23.7.2001 in OA No.1477/2000 and quash

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the same and direct the respondents 2 to 4 to retain the petitioner as work Mistry and accord him the scale of 4500-7000 on the basic pay of Rs.7000/- w.e.f.1.4.1999 stated therein.

For petitioner : Mr. V. Prakash,Sr. Counsel
for Mr. T. Ramkumar

For respondents (2 to 4) : Mr. M. Sekar

ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 23.07.2001 made in O.A.No.1477 of 2000, confirming the order reverting him as Gangmate, the applicant has filed above writ petition.

2. The case of the petitioner/applicant is briefly stated hereunder:

(a) According to the petitioner, he joined the service of Southern Railway in the year 1962 in Madurai Division. On 23.05.1968, he was appointed in regular service as Gangman in Madurai Division. On 23.05.1969, he was confirmed as Gangman. Thereafter, he was promoted as Motor Trolley Fitter, which post is equivalent to that of Gangmate with effect from 14.03.1973. On 13.03.1973, he was transferred to the construction wing. From 14.03.1973 to 15.07.1974, he had performed the work of Motor Trolley Fitter. In the construction wing, on 15.07.1974, he was promoted as Permanent Way Maistry. On 01.03.1980, he was promoted as Permanent Way Inspector Gr.III. On 17.05.1990, he was promoted as Permanent Way Inspector Grade II. Thereafter, on 23.04.1992, he was deputed to Konkan Railway Corporation Ltd., where his services were utilised as Permanent Way Inspector Grade I from 20.06.1995 onwards.

(b) All his promotions from the post of Motor Trolley Fitter onwards were made on ad hoc basis and from 1974 onwards, he was continuously officiating in the said posts. When he was working in the Konkan Railway Corporation, he was awarded 12 certificates for his meritorious and exemplary service and also awarded two silver medals. On 01.04.1999, he was repatriated back to Southern Railway and thereafter, posted in Madurai

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Division as Supervisor/Works in the scale of Rs.4500-7000 by Office Order dated 16.04.1999. On 26.07.1999, the petitioner made a representation to the Chief Personnel Officer, seeking pay protection. Thereafter, he was issued with an Office Order dated 05.11.1999 by the 4th respondent herein, reverting him as Gangmate in the scale of Rs.3050-4590 stating that he was being posted as per seniority in his substantive post.

(c) On 15.11.1999, the petitioner made a representation to the third respondent as against his reversion, to which there was no response; hence, he filed O.A.1238 of 1999 before the Central Administrative Tribunal, Madras Bench, in which the Tribunal directed the third respondent to dispose of the representation of the applicant. Pursuant to the direction of the Tribunal dated 13.09.2000 made in O.A.No.1238 of 1999, the third respondent issued an order confirming the said order of reversion dated 05.11.1999. Challenging the said order, the petitioner filed O.A.No.1477 of 2000, which was dismissed by the Tribunal. Aggrieved by the order of the Tribunal, the applicant/petitioner filed the writ petition.

3. The Railway Administration has filed a counter affidavit wherein it is stated that promotions of the petitioner as Permanent Way Inspector Grade III, Grade II and Grade I were all on ad hoc basis and the writ petitioner still retained lien in the parent Department at Permanent Way Section, Palani and his seniority remained protected. From 1992 to 31.03.1999, he was worked as Permanent Way Inspector Grade-I and then relieved from Konkan Railway Corporation Ltd. By an order dated 14.04.1999 of the 3rd respondent, he was mistakenly posted as Supervisor/Works in the scale of Rs.4500-7000 in Madurai Division as against the post equivalent to Permanent Way Maistry as there was no sanctioned cadre of Supervisor/Works in Madurai Division. This bona fide mistake was duly noticed and informed by order dated 07.10.1999 of the third respondent. The 4th respondent passed an order dated 05.11.1999, rectifying the defect after assigning his correct position in the seniority list. Accordingly, the petitioner was posted as Gangmate in the scale of Rs.3050-4590 in Permanent Way Section and was placed between Thangamuthu and Peya Thevar. Questioning the same, the petitioner has approached the Central Administrative Tribunal. The Tribunal, after accepting the stand of the Department, dismissed his application, stating that the said order is perfectly in order and does not require any interference. The petitioner is aware of the fact that he is going out of cadre post to an ex-cadre post on deputation knowing well of its consequences. Any ad hoc promotion obtained by the petitioner in the ex-cadre post will

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not help him in any way to improve his position in the original cadre post. If the claim of the petitioner is accepted, it will prejudice other employees. The placement of the petitioner in the seniority list is in order. All the ad hoc promotions obtained elsewhere shall not alter the seniority list, where the petitioner has retained his lien.

4. In the light of the above pleadings, we heard Mr. V. Prakash, learned senior counsel for the petitioner and Mr. M. Sekar, learned counsel for the respondents.

5. There is no dispute that though the petitioner was temporarily recruited as Gangman in the Permanent Way Section, he was transferred to Palani and confirmed as Gangman on 23.5.1969 in the scale of Rs.70-85. Thereafter, he was transferred to Trivandrum Construction Wing as Motor Trolly Fitter from 14.3.1973 maintaining lien in the Permanent Way Section at Palani. It is further seen that later he was promoted as Permanent Way Maistry in the scale of Rs.330-480 on ad hoc basis. Though from time to time, he was allowed to continue in the same post, it is not in dispute that his continuance was only on ad hoc basis. Again he was promoted on ad hoc basis as Permanent Way Inspector III in the Construction Wing from 1.3.1980. On 17.5.1990 he was promoted as Permanent Way Inspector II in the scale of Rs.1600-2660. A perusal of both the above orders shows that the petitioner was made aware that these ad hoc promotions would not confer on him any right in future promotion. While so, in the year 1992, he was deputed to Konkan Railway Corporation Ltd. on further ad hoc promotion as Permanent Way Inspector I. Here again, it is not in dispute that in all the ad hoc promotions, the petitioner still retained lien in the parent Department at Permanent Way Section, Palani and his seniority remained protected.

6. The particulars furnished by the Railway Administration show that from 1992 to 31.3.1999 the petitioner worked as Permanent Way Inspector Grade I and then relieved from Konkan Railway Corporation Ltd. No doubt, by order dated 14.4.1999 of the Chief Personnel Officer, Southern Railway, Chennai he was posted as Supervisor/Works in the scale of Rs.4500-7000 in Madurai Division as against the post equivalent to Permanent Way maistry. However, according to the third respondent, the said order posting the petitioner as Supervisor/Works was a mistake as there was no sanctioned cadre of Supervisor/Works in Madurai Division and the same was duly informed by order dated 7.10.1999 of the third respondent. Thereafter, the fourth

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respondent, Divisional Personnel Officer, Southern Railway, Madurai passed an order dated 5.11.1999 rectifying the defect after assigning him the correct position in the seniority list. Pursuant to the same, the petitioner was posted as Gangmate in the scale of Rs.3050-4590 in Permanent Way Section.

7. Though Mr.V.Prakash, learned senior counsel for the petitioner vehemently contended that the respondents are not justified in posting the petitioner as Gangmate in the scale of Rs.3050-4590 after his return from Konkan Railway Corporation Ltd., as discussed earlier, by keeping his lien in the parent Department, the petitioner accepted the terms and conditions of the deputation work and served in Konkan Railway Corporation Ltd. Even prior to that, it is not in dispute that when the petitioner was transferred to Construction Wing, his lien in the Permanent Way Section at Palani was being retained. It is true that as observed by the Hon'ble Supreme Court in 1988 (Supp) S.C.C. 519 (Raghunath Pd. Singh v. Secretary, Home (Police) Deptt.), reasonable promotional opportunities should be available in every wing of public service and in the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. Learned senior counsel also pressed into service the decision of the Supreme Court in CDJ 2004 SC Case No.953 (M.Amanullah Khan v. Government of India and others) wherein it is held that the period of continuous officiation in senior posts would count only from the date of inclusion in the Select List or from the date of officiating appointing to senior post whichever is later. While there is no quarrel over the proposition enunciated in those decisions, the fact remains that when the petitioner opted to go on deputation to some other concern, his seniority in the parent Department, namely, Permanent Way Section at Palani was being maintained and all the promotions admittedly were given only on ad hoc basis. Even though he had spent considerable time at Konkan Railway Corporation Ltd., as rightly pointed out by the learned counsel appearing for the Railway Administration, the petitioner, having enjoyed certain facilities in the post he served on deputation, by retaining his lien in the parent Department, he cannot be allowed to contend that the ad hoc promotions have to be taken into account while considering his case in the parent Department on his reversion. In the light of the factual details, we are of the view that the decisions relied upon by Mr.V.Prakash, learned senior counsel are not helpful to the case of the petitioner.

8. As stated earlier, any promotion outside the cadre post in the Permanent Way Section is purely on ad hoc basis as

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separate seniority list is maintained for the open line and the construction wing. Therefore, as pointed out by the learned counsel for Railway Administration, the ad hoc promotion of Motor Trolley Fitter is not regularised in the cadre of the petitioner as it is an ex cadre post. As rightly pointed out, the petitioner, having admitted that various promotions had been given on ad hoc basis, on retention of the lien in his parent department, namely, Permanent Way Section, cannot seek to regularise those ad hoc promotions. Further, he was very well aware of the fact that he was going out of cadre post to an ex-cadre post on deputation knowing well of its consequences. It is not in dispute that any ad hoc promotion obtained by the petitioner in an ex-cadre post is in no way helpful to him to improve his position in the original cadre post. It is brought to our notice that there is no provision to regularise the services in ex-cadre post in the cadre post as it will prejudice other employees.

In the light of our discussion, we do not find any merit in the claim made by the petitioner. On the other hand, we are in agreement with the conclusion arrived at by the Tribunal. Consequently, the writ petition fails and the same is dismissed. No costs.

Kh

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
   Central Administrative Tribunal
   Chennai Bench
   High Court Buildings
   Chennai 600 104.
2. The Secretary
   Ministry of Railways
   Union of India
   Rail Bhavan
   New Delhi 110 001.
3. Chief Personnel Officer
   Head Quarters Office
   Personnel Branch

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Southern Railway
Chennai 600 003.

4. Divisional Personnel Officer
Divisional Office
Personnel Branch
Southern Railway
Madurai.

+1 CC to Mr.P.Chandrasekar, Advocate, SR No.31048.

TEJ(C.O)
BG/01.08.2005.

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